

USDA
OALJ/OHC
2012 MAY 10 PM 1:18
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 12-0428
)
CINDY BARDIN, an individual doing)
business as JUNGLE EXPERIENCE,)
)
Respondent,) COMPLAINT

There is reason to believe that the respondent named herein have willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), and the regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.)(the "Regulations" and "Standards"). Therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Respondent Cindy Bardin is an individual doing business as Jungle Experience, and whose mailing address is 6603 State Route 149, Granville, New York 12832. At all times mentioned herein, said respondent operated as an exhibitor, as that term is defined in the Act and the Regulations and held Animal Welfare Act license number 21-C-0319 as an "individual."

2. Respondent operates a moderately-sized zoo business exhibiting approximately 25 nonhuman primates and other wild and exotic mammals, to the public. On or about May 9, 2011, respondent Bardin was convicted of three counts of violating New York state laws governing animals, specifically Environmental Conservation Law (ECL) sections 71-4001(a)(license violations) and 180(1)(b)(possession of an African lion without a permit). The violations alleged in the instant complaint are serious, and involve repeated instances of noncompliance over an extended period of time.

3. APHIS officials conducted inspections of respondent's facilities, animals and records

on September 6, 2007, March 19, 2008, July 6, 2009, June 22, September 21, and December 3, 2010, and June 3 and October 12, 2011, and documented noncompliance with the Regulations on each of these occasions.

ALLEGED VIOLATIONS

4. On or about September 6, 2007, and September 21, 2010 respondent failed to establish and maintain programs of veterinary care that included the use of appropriate methods to prevent diseases and injuries; specifically, respondent failed to have an accurate written program of veterinary care available for inspection, in willful violation of the Regulations. 9 C.F.R. § 2.40(a).

5. On or about September 6, 2007, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. The lemur enclosure was excessively rusted such that it could not be sanitized as required. 9 C.F.R. § 3.75(c)(1)(i).
- b. Respondent had no plan for the environmental enhancement for nonhuman primates. 9 C.F.R. § 3.81.
- c. There was an accumulation of building materials in the animal area that could serve as a harbor for pests. 9 C.F.R. § 3.131(c).
- d. There was a pile of nails adjacent to the cougar cage and accessible to the cougar. 9 C.F.R. § 3.131(c).

6. On or about March 19, 2008, respondent failed to handle non-human primates as carefully as possible in a manner that would not cause physical pain, stress, or discomfort, in willful violation of the Regulations, and specifically, respondent housed one of four lemurs in a basement room outside of a primary enclosure. 9 C.F.R. § 2.131(b)(1).

7. On or about July 6, 2009, respondent failed to maintain accurate and complete records of the acquisition and disposition of a coatimundi, as required, in willful violation of the Regulations. 9 C.F.R. § 2.75(b).

8. On or about July 6, 2009, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. The lemur enclosure was excessively rusted such that it could not be sanitized as required. 9 C.F.R. § 3.75(c)(1)(I).
- b. The cougar enclosure was excessively rusted such that it could not be sanitized or cleaned as required. 9 C.F.R. § 3.125(a).
- c. The enclosure housing lynx was unlocked. 9 C.F.R. § 3.125(a).
- d. Respondent had no perimeter fence enclosing the primary enclosures of the bear and cougar. 9 C.F.R. § 3.127(d).
- e. Respondent had only a partial perimeter fence enclosing the primary enclosure for tigers, and the partial fence was less than 8 feet high, and structurally ineffective. 9 C.F.R. § 3.127(d).

9. On or about June 22, 2010, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Water and water receptacles for bears were dirty. 9 C.F.R. § 3.130.
- b. There was a wire protruding into the capuchin enclosure. 9 C.F.R. § 3.75(a).
- c. There was an accumulation of clutter around the premises. 9 C.F.R. § 3.131(c).

10. On or about September 21, 2010, respondent failed to handle capuchin and baboons during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between these nonhuman primates and the general viewing public so as to assure the safety of animals and the public, in willful violation of the Regulations, and specifically, there was no secondary barrier between the public and the primates' primary enclosure, and the enclosures were not constructed in a manner that would prevent the public from having direct contact with the animals. 9 C.F.R. §§ 2.131(c)(1), 3.78(e).

11. On or about September 21, 2010, respondent failed to handle a coatimundi during public exhibition so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the coatimundi and the general viewing public so as to assure the safety of animals and the public, in willful violation of the Regulations, and specifically, there was no barrier fence between the public and the coatimundi enclosure, and the enclosure was not constructed in a manner that would prevent the public from having direct contact with the animal. 9 C.F.R. § 2.131(c)(1).

12. On or about September 21, 2010, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Respondent had a five-month-old tiger on the premises, which tiger was being fed a diet that had not been reviewed and/or approved by respondent's attending veterinarian. 9 C.F.R. § 3.129.

13. On or about December 3, 2010, respondent failed to handle multiple animals (serval, pig, lion, bear, fox and lynx) during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the Regulations, and specifically, there were no barrier fences between the public and the enclosures housing the aforementioned animals so as to prevent the public from having direct contact with the animals. 9 C.F.R. § 2.131(c)(1).

14. On or about December 3, 2010, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Food storage areas were also used for housing animals, there were open food bags, the rooms were cluttered with construction and cleaning materials, fruit and vegetables were stored on the floor in open containers under a roof that was under construction, and dog feces was observed in one corner of the food storage room. 9 C.F.R. § 3.125(c).

- b. Respondent's perimeter fence behind lynx enclosure lacked sufficient structural strength. 9 C.F.R. § 3.127(d).
- c. There was an accumulation of clutter around the premises. 9 C.F.R. § 3.131(c).
- d. Respondent's enclosures for animals contained trees that were located close to the enclosure fences and could provide the animals with a means of escape. 9 C.F.R. § 3.125(a).

15. On or about June 3, 2011, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Respondent's perimeter fence lacked sufficient structural strength. 9 C.F.R. § 3.127(d).

16. On or about October 13, 2011, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. There were protruding nails and a hammer in the pig enclosure. 9 C.F.R. § 3.125(c).
- b. There was a wire protruding into the lion enclosure. 9 C.F.R. § 3.125(c).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact willfully violated the Act and the regulations issued under the Act, this complaint shall be served upon the respondent. The respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests that unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material

allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and that such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order that respondent cease and desist from violating the Act and the regulations and standards issued thereunder, assessing civil penalties against the respondent in accordance with section 19 of the Act (7 U.S.C. § 2149) for their violations herein, and suspending or revoking Animal Welfare Act license 21-C-0319.

Done at Washington, D.C.
this 30th day of April 2012

Acting


Administrator
Animal and Plant Health Inspection Service

COLLEEN A. CARROLL
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
1400 Independence Avenue, S.W.
Room 2325B South Building
Washington, D.C. 20250-1400
Telephone (202) 720-6430; 202-690-4299 (Fax)
e-mail: colleen.carroll@usda.gov